STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE OWNERSHIP OF	**)**	
RENEWABLE ENERGY CERTIFICATES ("RECS")	**)**	**Docket Nos:**
UNDER THE ELECTRIC DISCOUNT AND	**)**	**EO04040288**
ENERGY COMPETITION ACT, AS IT PERTAINS	**)**	**and**
TO NON-UTILITY GENERATORS AND THE	**)**	**EX04080879**
BOARD'S RENEWABLE ENERGY PORTFOLIO		**)**
STANDARDS	**)**	

COMMENTS OF
Covanta Energy

Covanta Energy is pleased to provide the Board of Public Utilities (BPU) with comments in the above-captioned proceeding. The Board's Order of August 18, 2004, in the above matter posed three questions and also asked participants in this proceeding to provide comments. The discussion below provides Covanta Energy's recommendation in this matter and implicitly responds to the three questions posed in the Order.

Introduction

Covanta Energy, with headquarters located in Fairfield, New Jersey, is an owner and operator of modern waste-to-energy (WTE) facilities. Covanta's twenty-five WTE plants convert municipal solid waste into renewable energy for numerous communities predominantly in the United States. The company also operates related infrastructure such as transfer stations, water and waste water facilities. Covanta Energy is proud to offer environmentally sound solutions to communities' solid waste disposal needs. Covanta operates the Covanta Warren Energy Resource Company facility (Covanta Warren) which is located in Oxford, New Jersey. It is operated in partnership with the Pollution Control Financing Authority of Warren County and serves the waste disposal needs of over 120 communities in Northern New Jersey.

Covanta Warren sells the power it generates to JCP&L through a long term Power Purchase Agreement (PPA). It is an agreement to sell capacity and energy, two defined products, and no sale of renewable attributes is specifically provided for nor implied. The PPA was approved by the BPU on July 3, 1986, without modification.

Covanta Energy also operates a waste-to-energy facility in Rahway, New Jersey, and serves the waste disposal needs of several communities in Union County. The Rahway facility is not under a long term PPA and, as a result, sells its renewable attributes in the open market. If a BGS supplier uses renewable attributes from the Rahway facility, it purchases them in the open market.

Discussion

Covanta Energy recommends that the Board confirm that NUGs involved in long term PPAs have ownership of the RECs they generate and may sell them separately from the capacity and energy produced by the plant. The BPU should require BGS suppliers to purchase their RECs from the market.

As discussed below, there is both a strong policy and legal basis for the BPU to reverse its policy of providing a free commodity, RECs, to BGS suppliers, thereby restricting REC sales that renewable facilities with energy contracts are entitled to and skewing the market development of renewable facilities.

Covanta Energy respectfully urges the Board to change its current policy of providing winning BGS bidders with renewable attributes at no cost. This policy gives BGS suppliers an unfair advantage by granting them free renewable certificates (RECs) in order to comply with their renewable portfolio standard obligation. Recent FERC decisions, as well as the BPU's desire to create an active renewable market, support the need for a modification of the BPU's policy.

On October 1, 2003, the Federal Energy Regulatory Commission (FERC) issued an order concluding that power purchase agreements entered into pursuant to PURPA do not transfer renewable attributes to the purchasing utility in the absence of an express contractual provision within the underlying power purchase agreement. As stated above, Covanta Warren has a long-term PPA with JCP&L, and that PURPA contract does not include any provisions transferring the ownership of renewable attributes to JCP&L.

As is stated in the FERC decision, the RECs created belong to the generator: the fact that they have a long term PPA is irrelevant. It is fundamentally unfair, and unduly discriminatory, that only renewable facilities without long term PPAs can receive additional value from their RECs. This point is furthered by the fact that New Jersey's Electric Discount and Energy Competition Act (EDECA) does not distinguish between merchant and contracted plants in its renewable portfolio standard provisions. In short, NUGs with contracts are entitled to reap the same benefits associated with REC production as merchant plants do.

Current BPU policy requires competitive retail suppliers to go into the market to purchase RECs, while BGS suppliers get them for free. By giving away renewable attributes to winning BGS suppliers at no cost, it may keep BGS bid prices lower. However, this policy ultimately harms the development of a competitive retail energy market, since the competitive retailers must price the cost of RECs into their products while the BGS supplier's price reflects the impact of free RECs.

The BPU's policy of restricting the sale of attributes from renewable facilities with long term PPAs is also harmful to municipalities and taxpayers. Due to the BPU's policy, Covanta Warren is unable to sell its RECs and realize revenues from REC sales. These revenues would be shared with Covanta Warren's customers, municipalities in Northwest New Jersey, which would, in turn, turn these benefits to their taxpayers. Hence, a modification of BPU policy to allow renewable facility owners and operators to realize the value of their RECs will help reduce New Jersey's property taxes.

Finally, the BPU should require BGS suppliers to purchase their RECs to comply with the RPS as an important step in creating an active and competitive renewable marketplace in New Jersey. New Jersey has one of the most aggressive renewable portfolio standards and renewable development policies in the nation. Allowing RECs to be freely traded will help achieve the goal of the renewable portfolio standard: to create a market-based incentive for development and continued operation of renewable sources.

In conclusion, by allowing NUGs to receive the value of RECs that are legally theirs, the BPU can promote the development of a prosperous REC market and encourage the development and operation of renewable projects. Further, additional revenues from the sale of renewable attributes will aid renewable energy facilities to continue their operations and will allow Covanta Warren to reduce the cost of disposal to municipalities and taxpayers of Northwest New Jersey.

In conclusion, Covanta Energy recommends that the BPU issue an order that finds that NUGs involved in long term PPAs have ownership of the RECs they generate and may sell them separately from the capacity and energy produced by the plant. The BPU should require BGS suppliers to purchase their RECs from the market.

Covanta Energy appreciates the opportunity to provide the BPU with these comments.